

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COUNCIL OF THE CITY OF ST. PAUL

In the Matter of the License  
Held by Mike Bartelmy  
d/b/a Mike's Towing  
License No. 17943

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for hearing on April 7, 1999, before Administrative Law Judge Barbara L. Neilson, in Room 40-B of the Saint Paul City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota 554102. The record closed at the conclusion of the hearing on April 7, 1999.

Virginia D. Palmer, Assistant City Attorney, Office of the City Attorney, 400 City Hall, 15 West Kellogg Blvd., Saint Paul, Minnesota 55102, represented the City of St. Paul's Office of License, Inspections and Environmental Protection. Mike Bartelmy, 847 Hudson Road, Saint Paul, Minnesota 55106, the owner of Mike's Towing, appeared on his own behalf, without benefit of counsel.

**NOTICE**

This Report contains a recommendation and not a final decision. The Saint Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Section 310.05 of the Saint Paul Legislative Code, the City Council's final decision shall not be made until this Report has been made available to the parties to the proceeding and the Licensee has been provided an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or the interpretation of the facts and an opportunity to present argument relating to any recommended adverse action. The Licensee and any interested parties should contact the Saint Paul City Council, 310 City Hall, Saint Paul, Minnesota 55102, to ascertain the procedure for presenting argument to the Council.

**STATEMENT OF ISSUES**

This case presents the following issues:

1. Did the Licensee operate Mike's Towing in such a manner that it violated the conditions placed upon the license with respect to the number of vehicles outside the licensed building and the exterior storage of parts, material, or debris?

2. If so, should the St. Paul City Council revoke the Licensee's auto repair garage license?

Based upon all of the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. The Licensee, Mike Bartelmy, d/b/a Mike's Towing, has operated an auto repair garage at 847 Hudson Road in Saint Paul for at least 20 years. The Licensee holds an auto repair garage license from the City of Saint Paul (license no. 0017943). His current license expires on December 31, 1999. (Testimony of Schweinler; Ex. 1.)

2. The City has received on-going complaints for many years regarding the Licensee's property, particularly after the snow melts and the items under the snow come to light. Most of the complaints have concerned the number of vehicles and the storage of scrap wood on the property. (Testimony of Schweinler.)

3. In 1988, after the City's Office of License Inspection and Environmental Protection ("LIEP") received numerous complaints concerning the Licensee's property from District Council No. 4 (the community council in the area surrounding the Licensee's business), a hearing was held regarding the Licensee's operations. As a result, the City Council placed eight conditions on the Licensee's license. The following conditions are involved in the present case:

Condition No. 3: There shall be no exterior storage of parts or material.

Condition No. 5: The licensee shall not cause or permit the accumulation of any quantity of parts or material or debris on the exterior of the property, whether stored in vehicles or not, and shall store all parts or material in the building or in the 8x10 shed built on the property in August of 1993.

Condition No. 6: The number of vehicles outside of the licensed building shall not exceed eight (8) vehicles in number at any time (excluding the tow trucks of the licensee).

(Testimony of Schweinler; Exs. 1, 4.)

4. On November 30, 1993, the City took adverse action against the Licensee's license. At that time, the City ordered a 30-day suspension of the license, but the suspension was stayed in conformity with the conditions placed on the license. (Testimony of Schweinler.)

5. Another adverse action was taken against the Licensee during the summer of 1998. At that time, the Licensee's license was suspended for 30 days. Fifteen of the 30 days were stayed for two years if the following conditions were met: (1) LIEP certified that the premises were in compliance with all conditions, and (2) there were no further violations of the conditions on the license. The issues in the 1998 hearing involved the number of cars on the Licensee's lot and the outdoor storage of materials

such as scrap wood, planks, and engine and car parts. (Testimony of Schweinler; Ex. 1.)

6. Since the Licensee's business reopened on approximately September 1, 1998, LIEP has received three additional complaints about the Licensee's business operations. Kristina Schweinler, a LIEP License Inspector, talked to the Licensee in response to these complaints. (Testimony of Schweinler.)

7. On January 5, 1999, Ms. Schweinler conducted a drive-by inspection of the Licensee's property. She counted 13 cars on the licensed property, one of which was covered with a tarp. Vehicles parked on the vacant lot adjacent to the Licensee's property were not included in this count, nor were cars parked on the street. Ms. Schweinler also noticed junk outside the buildings on the property and firewood, scrap wood, or treated lumber under a boarded-up window of the main building and on top and next to the shed. There had been a snowfall within the 24 hours prior to the inspection, and the streets had not yet been plowed that day. There was snow on all of the vehicles. Ms. Schweinler stopped her car and took pictures of the property. (Testimony of Schweinler; Exs. 2a-2e, 3.)

8. One of the 13 vehicles counted by Ms. Schweinler was a tow truck that appeared to her to have been there for some time without being moved. In reality, this was an operable "back-up" tow truck. This vehicle should not have been included in the count, since Condition No. 6 specifies that the tow trucks of the Licensee were not to be included in the 8-vehicle limit.

9. At some time shortly after the January 5, 1999, drive-by inspection of the Licensee's property, there was a fire on the Licensee's property. (Testimony of Schweinler.)

10. Following the January 5, 1999, inspection, the Director of LIEP decided to recommend that adverse action in the form of license revocation be taken against the Licensee's auto repair garage license based upon the observed violations of the conditions placed on his license. The recommendation was made due to the number of complaints LIEP continued to receive, the fact that the City had taken prior adverse action against the Licensee's license, and the belief that the City had exhausted all means for trying to bring this property into compliance. (Testimony of Schweinler; Ex. 3.)

11. On or about January 28, 1999, the City served a Notice of Violation on the Licensee noting that the Director of LIEP was recommending as a result of the January 5, 1999, inspection that adverse action be taken against the Licensee's auto repair garage license. (Ex. 4.)

12. The Licensee filed a timely letter indicating that he contested the facts alleged in the Notice of Violation. (Ex. 5.)

13. The Notice of Hearing scheduling the April 7, 1999, hearing in this matter was served on the Licensee by mail on February 26, 1999, and filed with the Office of Administrative Hearings on March 1, 1999. (Ex. 6.)

14. The Licensee's building has been determined to be structurally sound and he has applied for a building permit to repair the interior damage caused by the fire.

The Licensee requested at the hearing that his license be “held” for approximately six months until he finishes repairing the fire damage and brings the building back into compliance with City codes.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Saint Paul City Council and the Administrative Law Judge have jurisdiction in this matter pursuant to § 310.05 of the St. Paul Legislative Code and Minn. Stat. § 14.55 (1998).

2. The hearing was conducted in accordance with the requirements of Minnesota Statutes sections 14.57 to 14.62 and applicable portions of the procedures set forth in section 310.05 of the Saint Paul Legislative Code.

3. The City has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

4. The City bears the burden in this matter of proving by a preponderance of the evidence that adverse action is warranted with respect to the Licensee’s auto repair garage license.

5. Chapter 310 of the Saint Paul Legislative Code contains general provisions relating to licenses issued by the City. Section 310.06(b)(5) of the Saint Paul Legislative Code provides that adverse action may be taken when “[t]he licensee or applicant has failed to comply with any condition set forth in the license, or set forth in the resolution granting or renewing the license.”

6. Adverse action is defined in St. Paul Legislative Code § 310.01 to include revocation.

7. The City demonstrated by a preponderance of the evidence that the Licensee failed to comply with several conditions that were placed upon his license in 1988. Specifically, the City showed that the Licensee stored wood, junk, and other materials on the exterior of his property in violation of Conditions 3 and 5 and permitted more than eight vehicles to be parked outside of the licensed building on January 5, 1999, in violation of Condition 6. The Licensee has not refuted the City’s showing.

8. The City’s recommended revocation of the license is not arbitrary or capricious and is a reasonable exercise of its discretion under section 310.06 of the St. Paul Legislative Code.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

**IT IS HEREBY RESPECTFULLY RECOMMENDED:**

That the St. Paul City Council take adverse action against the auto repair garage license of Mike Bartelmy, d/b/a Mike’s Towing.

Dated this 7th day of May, 1999.

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BARBARA L. NEILSON  
Administrative Law Judge

### **MEMORANDUM**

The City of Saint Paul's Office of License, Inspections and Environmental Protection (LIEP) has recommended revocation of the auto repair garage license of Mike Bartelmy d/b/a Mike's Towing, pursuant to § 310.06(b)(5) of the St. Paul Legislative Code. This section states that the City may take adverse action against a license if the licensee "has failed to comply with any condition set forth in the license, or set forth in the resolution granting or renewing the license." The conditions at issue limit the number of vehicles outside the licensed building to eight (excluding the tow trucks) and prohibit the exterior storage of parts or materials or debris. The conditions placed on the Licensee's license specify that all parts or materials shall be stored in the building or the shed located on the property.

These conditions were placed on the Licensee's license as the result of an adverse action taken in 1988. The City's inspector acknowledged that the Licensee has met the conditions placed on his license at times, but not on a consistent basis. There have been repeated discussions with the Licensee about the fact that no outdoor storage was permitted and only eight cars were allowed on his lot. In addition, previous violations of these conditions resulted in a 30-day suspension in 1993 which was stayed as long as the Licensee complied with the conditions placed on his license and an additional 30-day suspension in 1998, 15 days of which were stayed for two years if LIEP certified after the 15-day suspension that the premises were in compliance with all conditions and there were no further violations of the conditions placed on the license.

The City established that twelve vehicles were parked outside of the licensed building on January 5, 1999, excluding the Licensee's tow trucks. In addition, the City demonstrated that wood and other materials were present on the grounds surrounding the licensed building. Because it appears that the fire at the Licensee's business occurred after the January 5 inspection, there is no reason to believe that the items found outside the Licensee's buildings were thrown outside as a result of the fire, as the Licensee initially claimed.

The Licensee admitted that he is aware of the conditions placed upon his license but does not strictly comply with them, particularly during the winter months. He rarely counts the cars on his lot and admitted that treated planks and firewood were kept outside the buildings on the licensed premises. He contended that the 12-foot-long planks would not fit in his shed and stated that he simply has six pieces of firewood outside. He explained that some of the cars on the lot on January 5 may have been "snowbirds" that he towed to his lot during the snow emergency as part of his business and emphasized that it is difficult to comply with the vehicle restrictions during the summer months.

The Licensee apparently continues to misunderstand the nature of the conditions imposed on his license and his responsibility to ensure compliance with them, as evidenced by his belief that he should not be faulted if his mother occasionally parks her car on his lot, he should not be held responsible for neighbors who may park on his lot, and he should be allowed to store wood outside the building. He has received ample warning in the past of the need to comply with these conditions in order to retain his license. His failure to comply cannot be excused.

Based upon all of the circumstances, the Administrative Law Judge finds that the City has shown by a preponderance of the evidence that adverse action should be taken against the Licensee's license for noncompliance with the conditions placed on the license. Such adverse action may include revocation of the Licensee's license. The City's recommended revocation of the Licensee's license is not arbitrary and capricious and is a reasonable exercise of its discretion under section 310.06 of the St. Paul Legislative Code.

B.L.N.